

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 440 of 2005

LR'S OF BAJRANG LAL
V/S
SAROJ

Mr. JK BHAIYA, for the appellant / petitioner

Date of Order : 6.7.2006

HON'BLE SHRI N P GUPTA, J.

ORDER

Heard learned counsel for the appellant.

The defendant, by this appeal seeks to assail the decree for eviction, passed by the two learned Courts below, passed on the ground of reasonable and bonafide necessity of the plaintiff.

It is contended by the learned counsel for the appellant, that the case of the appellant-defendant was, that the defendant is the owner of the property by adverse possession, and the learned Courts below were in error in deciding issue No.1 about the relationship of landlord and tenant. It was contended that the story of letting out the premises to the appellant on 11.2.82 is inherently improbable, as according to the plaintiff her father had purchased the plot on 12.3.81 and raised two storied construction thereon, and the premises was let out to the

appellant by way of oral tenancy on 11.2.82, while there was no such close acquaintance between the parties.

Learned counsel argued, that the land was purchased by the appellant, but then admitted that no such document of purchase was ever submitted on record.

A look at the judgment of the learned Lower Appellate Court shows that findings on issue No.1 and 3 only were assailed in appeal, and before me also submissions have been made on these two issues only, obviously therefore, I need not go into the other issues.

I have considered the submissions and find, that the learned Courts below have gone into the material on record very closely, and have found, that the evidence of both the parties in this regard is conflicting, as the original defendant Bajrang Lal had filed affidavit deposing to be the owner of the plot for last 50 years and being in possession as owner, but he expired before he could be cross-examined, and the other defendant and her son have simply deposed that the house belonged to the ancestor Bajrang Lal, and it was never taken on rent from the plaintiff, while according to the plaintiff, it was an oral tenancy. The learned Courts below in that view of the matter considered the documentary evidence on record, which was got exhibited by way of moving application under Order

18 Rule 17, and thereafter, the defendant was also given liberty to rebut the evidence, in which rebuttal he filed affidavit on 6.8.02, which affidavit was taken on record with respect to document Ex.3 to 7. After appreciating these documents, learned Courts below have found, that in these documents, the defendant has admitted to be tenant in the property. The documents include Ex.7 being certified copy obtained from the Court of Additional Collector, Bikaner and in Ex.3 being the application the defendant No.1, wherein he had clearly pleaded the land to be in his tenancy from Roop Chand since 11.2.82, and his living there as a tenant. In para-6 of Ex.4, it was also pleaded that the plot was purchased by Roopchand and new house was constructed and was let out to him on 11.2.82. Similar averments have been made in Ex.6 and 7.

In my view, in view of this overwhelming evidence, it cannot be said, that the findings recorded by the learned Courts below on issues No.1 and 3 require any interference.

Thus, the appeal does not involve any substantial question of law, and the same is, therefore, dismissed summarily.

(N P GUPTA), J.

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